

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

THE RESTAURANT ZONE LLC,

Plaintiff,

-against-

SHKELZEN ISLAMAJ, et al.,

Defendants.

23-CV-02595 (AS)

ORDER

ARUN SUBRAMANIAN, United States District Judge:

Defendants' motion in limine is GRANTED with respect to the 7.5% monthly late fee. Dkt. 65. It is DENIED WITHOUT PREJUDICE in all other respects.

The Court finds that the late fee is "unenforceable as against public policy because it amount[s] to a per annum rate in excess of 25%." *ESRT 501 Seventh Ave., LLC v. Regine, Ltd.*, 171 N.Y.S.3d 54, 55 (1st Dep't 2022). New York courts have repeatedly refused to uphold late fees on this basis, including in the commercial context. *See ESRT 501 Seventh Ave.*, 171 N.Y.S.3d at 55; *Cleo Realty Assocs., L.P. v. Papagiannakis*, 56 N.Y.S.3d 294, 295 (1st Dep't 2017); *Clean Air Options, LLC v. Humanscale Corp.*, 38 N.Y.S.3d 152, 153 (1st Dep't 2016); *Sandra's Jewel Box Inc. v. 401 Hotel, L.P.*, 708 N.Y.S.2d 113, 115 (1st Dep't 2000). Defendants cite one unreported case from a New York county court to argue that limits on interest rates do not apply in a commercial setting. But that case considered a lower late fee. *Old Country Rd. Realty, LP v. Zisholtz & Zisholtz, LLP*, 53 Misc. 3d 1203(A), 46 N.Y.S.3d 475 (N.Y. Dist. Ct. 2016). And it is not clear that the court considered public policy arguments rather than just New York law on usury. In any event, the strong weight of authority favors finding the late fee unenforceable here.

The Court has serious doubts that the 35% collections fee, if it is enforceable at all, should be applied to anything other than the initial invoice amount as "what is owed" but will reserve judgment on the matter. Dkt. 1-2.

The Clerk of Court is directed to terminate the motion at Dkt. 64.

Dated: December 13, 2023

New York, New York



ARUN SUBRAMANIAN
United States District Judge